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NORTH PLAZA SDN BHD

v.

EQUITICORP HOLDINGS LTD & ORS & OTHER APPEALS

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FEDERAL COURT, PUTRAJAYA
ZULKEFLI MAKINUDIN CJ (MALAYA)
ABDULL HAMID EMBONG FCJ
SURIYADI HALIM OMAR FCJ
C AHMAD MAAROP FCJ
ZALEHA ZAHARI FCJ
[CIVIL APPEALS NO: 02-43-05-2012(W),
02-38-05-2012(W) & 02-44-05-2012 (W)]
10 APRIL 2013

D

COMPANY LAW: *Liquidators - Powers of - Appointment of liquidator pursuant to consent order - Terms of - Liquidator to constitute committee of inspection - Failure of - Land belonging to wound up company was sold - Whether liquidator could sell land without establishing committee of*
E *inspection - Whether requirement to constitute committee of inspection mandatory - Whether purchaser fully aware of surrounding circumstances when entered into sale and purchase agreement - Whether bona fide purchaser for value - Companies Act 1965, ss. 218 & 236(2)(c)*

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The appeals herein related to the decision of the Court of Appeal in refusing to grant approval for the sale of 16 parcels of land ('the lands') which belonged to City Centre Sdn Bhd ('CCSB') on the terms and conditions as stipulated in the sale and purchase agreement ('SPA'). The SPA was entered into between CCSB
G (wound up pursuant to an order of the court) through its then liquidator and the appellant. The liquidator was appointed pursuant to a consent order ('Order') and through the said order, the liquidator was to constitute a committee of inspection. However, the liquidator failed to do so due to lack of funds.
H Subsequently, a conditional SPA was entered into between the appellant and the liquidator and the sale of the lands was conditional upon the court's approval. *Vide* encl. 71, the liquidator filed an application to the High Court for an approval to sell the said lands and the respondents, *inter alia*, who were the creditors
I of CCSB, were granted leave to intervene in encl. 71 in order to oppose the sale of the said lands. It was argued that by entering

into the SPA, the Order was contravened since the liquidator had not acted with the committee of inspection. The High Court allowed encl. 71 and ordered that approval be given for the sale of the lands on the terms and conditions in the SPA. On appeal, the Court of Appeal decided, *inter alia*, that the directions of the committee of inspection were mandatory and it would be unfair to approve the sale as it would be against the consensus and legitimate expectation of the contributors and creditors. Dissatisfied, the appellant appealed to this court and the issue that arose for consideration was whether a liquidator who had been appointed for a company that was wound up by court pursuant to s. 218 of the Companies Act 1965 ('the Act') could act independently under s. 236(2)(c) of the Act to sell lands owned by the wound up company despite the fact that there was an Order which appointed the liquidator together with a committee of inspection ('the question').

Held (dismissing appeals with costs)
Per Zulkefli Makinudin CJ (Malaya) delivering the judgment of the court:

(1) The liquidator's powers were limited by the Order and the provisions of the Act which required the liquidator to act together with a committee of inspection, in particular when exercising the power to sell properties. Hence, it was a mandatory requirement that a committee of inspection be established. However, the liquidator failed to establish the said committee or summon a meeting of creditors and contributors for that purposes. In light of this, the liquidator had acted in contravention and breach of the Order. (paras 10, 11 & 15)

(2) The intent and purpose of the appointment of the committee of inspection is to ensure a check and balance in respect of the liquidator's acts. If this was not done, then the Order would be rendered redundant. A liquidator derives the power of sale under s. 236(2)(c) of the Act and the exercise of the liquidator's powers is further regulated by s. 237. The exercise of any power under s. 236(2) of the Act is still subject to the control of the court under s. 236(3) of the Act. Further, due compliance with the requirements under s. 237 of the Act are of importance by reason of the Order that appointed the liquidator with a committee of inspection. On the facts, the liquidator not only failed to set up a committee of inspection but acted without one. (paras 11, 12, 13 & 14)

(3) By virtue of cl. 4.02(c) of the agreement, the sale and purchase transaction of the lands were conditional upon sanction being obtained from the winding up court. As such, the appellant had notice that without the said sanction, the transaction could not be performed or completed. The appellant was thus fully aware of the surrounding circumstances of the case when it entered into the conditional sale and purchase transaction and thus, could not say that it was a *bona fide* purchaser for value who was not privy to the terms of the Order. In the circumstances, the answer to the question posed was answered in the negative. (paras 16, 17 & 18)

Bahasa Malaysia *Translation Of Headnotes*

Rayuan-rayuan di sini adalah berkaitan dengan keputusan Mahkamah Rayuan menolak kebenaran untuk menjual 16 bidang tanah ('tanah-tanah tersebut') yang dimiliki oleh City Centre Sdn. Bhd. ('CCSB') berdasarkan terma-terma dan syarat-syarat seperti yang terkandung dalam perjanjian jual beli ('PJB'). PJB dimasuki antara CCSB (digulung melalui perintah mahkamah) melalui pelikuidasi terdahulunya dan perayu. Pelikuidasi dilantik di bawah perintah persetujuan ('perintah') dan melalui perintah tersebut, pelikuidasi perlu menubuhkan satu jawatankuasa pemeriksaan. Walau bagaimanapun, pelikuidasi gagal berbuat demikian kerana kekurangan dana. Kemudian, satu PJB bersyarat telah dimasuki antara perayu dan pelikuidasi dan jualan tanah adalah tertakluk kepada kebenaran mahkamah. Melalui lampiran 71, pelikuidasi telah memfailkan permohonan ke Mahkamah Tinggi bagi memperoleh kebenaran untuk menjual tanah-tanah tersebut dan responden-responden, antara lain, yang merupakan pemiutang CCSB, telah diberikan kebenaran untuk mencelah dalam lampiran 71 bagi membantah jualan tanah-tanah tersebut. Dihujahkan bahawa dengan memasuki PJB, perintah tersebut telah dilanggar memandangkan pelikuidasi tidak bertindak dengan jawatankuasa pemeriksaan. Mahkamah Tinggi telah membenarkan lampiran 71 dan diperintahkan bahawa kebenaran diberi bagi jualan tanah-tanah tersebut berdasarkan terma-terma dan syarat-syarat PJB. Atas rayuan, Mahkamah Rayuan telah memutuskan sebaliknya, antara lain, bahawa arahan jawatankuasa pemeriksaan adalah mandatori dan tidak adil untuk membenarkan jualan tanah-tanah tersebut memandangkan ia bercanggah dengan persetujuan dan harapan

yang sah penyumbang-pemyumbang dan pemiutang-pemiutang. Tidak berpuas hati, perayu merayu ke mahkamah ini dan isu yang dibangkitkan untuk pertimbangan adalah sama ada seorang pelikuidasi yang dilantik bagi suatu syarikat yang telah digulung oleh mahkamah di bawah s. 218 Akta Syarikat 1965 ('Akta') boleh bertindak secara bebas di bawah s. 236(2)(c) Akta untuk menjual tanah-tanah milik syarikat yang telah digulung walaupun terdapat perintah melantik pelikuidasi bersama-sama jawatankuasa pemeriksaan ('soalan').

Diputuskan (menolak rayuan-rayuan dengan kos)
Oleh Zulkefli Makinudin HB (Malaya) menyampaikan penghakiman mahkamah:

(1) Kuasa pelikuidasi adalah terhad melalui perintah dan peruntukan Akta yang memerlukan pelikuidasi bertindak bersama jawatankuasa pemeriksaan, terutamanya semasa melaksanakan kuasa untuk menjual hartanah. Oleh itu, adalah mandatori bagi satu jawatankuasa pemeriksaan ditubuhkan. Walau bagaimanapun, pelikuidasi telah gagal menubuhkan jawatankuasa pemeriksaan tersebut atau pun untuk mengadakan mesyuarat pemiutang-pemiutang dan penyumbang-penyumbang bagi tujuan itu. Dengan itu, pelikuidasi telah bertindak melanggar dan mengingkari perintah tersebut.

(2) Niat dan tujuan pelantikan jawatankuasa pemeriksaan adalah untuk memastikan pemeriksaan dan keseimbangan terhadap tindakan pelikuidasi. Jika ini tidak dilakukan, maka perintah akan menjadi tidak perlu. Pelikuidasi memperolehi kuasa untuk menjual di bawah s. 236(2)(c) Akta dan pelaksanaan kuasa pelikuidasi dikawal oleh s. 237. Pelaksanaan kuasa di bawah s. 236(2) Akta masih tertakluk kepada kawalan mahkamah di bawah s. 236(3) Akta. Tambahan lagi, pematuhan kepada kehendak s. 237 Akta adalah penting disebabkan perintah melantik pelikuidasi dengan jawatankuasa pemeriksaan. Atas fakta, pelikuidasi bukan sahaja gagal untuk menubuhkan satu jawatankuasa pemeriksaan tetapi telah bertindak tanpanya.

(3) Berdasarkan kl. 4.02(c) PJB, transaksi jual beli tanah-tanah tersebut tertakluk kepada sanksi yang diperolehi daripada mahkamah penggulungan. Oleh itu, perayu mempunyai notis bahawa tanpa sanksi tersebut, transaksi tersebut tidak boleh dilaksanakan atau diselesaikan. Perayu dengan itu sedar sepenuhnya tentang hal keadaan sekitaran kes apabila ia

memasuki transaksi jual beli bersyarat dan oleh itu, ia tidak boleh dikatakan sebagai pembeli *bona fide* bagi nilai yang bukan privi kepada terma-terma perintah tersebut. Dalam keadaan ini, soalan yang dibangkitkan dijawab secara negatif.

Case(s) referred to:
Woodsville Sdn Bhd v. Tien Ik Enterprise Sdn Bhd & Ors [2000] 1 LNS 335 HC ***(refd)***

Legislation referred to:
Companies Act 1965, ss. 236(2)(c), (3), 237(1), 241(1)

(Civil Appeal No: 02-43-05-2012(W))
For the appellant - Wong Kian Kheong, Karen Lee & Geraldine Oh with him); M/s Wong Kian Kheong
For the 1st and 2nd respondents - Robert Lazar, Shanti Mogan & SY Liew with him); M/s Shearn Delamore & Co
For the 3rd respondent - Shamsol Zakri Zakaria; SFC

(Civil Appeal No: 02-38-05-2012(W))
For the appellant - Wong Kian Kheong, Karen Lee & Geraldine Oh with him); M/s Wong Kian Kheong
For the 1st respondent - Manokaran (Sachpal Singh with him); M/s Megat Najmuddin Leong & Co
For the 2nd respondent - Shamsol Zakri Zakaria; SFC

(Civil Appeal No: 02-44-05-2012(W))
For the appellant - Wong Kian Kheong, Karen Lee & Geraldine Oh with him); M/s Wong Kian Kheong
For the 1st respondent - P Gananathan (Olivia Loh with him); M/s Gananathan Loh
For the 2nd respondent - Shamsol Zakri Zakaria; SFC

[Appeal from Court of Appeal; Civil Appeal No: W-02-(IM)-286-10]

Reported by Kumitha Abd Majid

JUDGMENT

Zulkefli Makinudin CJ (Malaya):

Introduction

[1] There are three appeals by the appellant, North Plaza Sdn Bhd before this court. Appeal No. 02-38-05/2012(W) is by the appellant against the decision of the Court of Appeal in allowing the appeal by the respondent, Cheah Theam Kheng. Appeal

No. 02-43-05/2012(W) is by the appellant against the decision of the Court of Appeal in allowing the appeal by the two respondents, Equiticorp Holdings Ltd and Equiticorp Financial Services Ltd. Appeal No. 02-44-05/2012(W) is by the appellant against the decision of the Court of Appeal in allowing the appeal by the respondent, United Securities Sdn Bhd.

[2] All the three appeals by the appellant relate to the decision of the Court of Appeal in refusing to grant approval for the sale of 16 parcels of land belonging to City Centre Sdn Bhd ('CCSB') on the terms and conditions as stipulated in the sale and purchase agreement dated 9 January 2007 ('SPA') entered into between CCSB and the appellant. The SPA was executed by CCSB through its then liquidator, Chuah Seong Phaik with the appellant at the purchase consideration of RM158 million. Chuah Seong Phaik has since been removed as liquidator of CCSB. The Court of Appeal declined to approve the sale and overturned the High Court decision approving the sale.

[3] On 10 May 2012 the Federal Court granted leave to the appellant to appeal on all the three appeal cases on the following question:

> "Whether a liquidator [Liquidator"] who had been appointed for a company that had been wound up by Court ["Wound Up Company"] pursuant to section 218 of the Companies Act 1965 ["the Act"] can act independently under section 236(2)(c) of the Act to sell lands owned by the Wound Up Company despite the fact that there was a consent order appointing the liquidator together with a Committee of Inspection.

[4] Since there is only one order appealed against on all the three appeals, that is the order of the Court of Appeal in refusing to grant the approval for the sale of the said 16 parcel of lands, it was agreed by all the parties for the appeals to be heard together. For the purpose of argument by the parties before us, all the parties agreed to refer to the appeal record of Appeal No. 02-43-05-2012(W).

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Background Facts

[5] The relevant background facts relating to the three appeals case before us may be summarised as follows:

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(a) On 25 April 2000, CCSB was wound up pursuant to an order of the High Court *vide* Kuala Lumpur High Court (Companies Winding Up) No. D6-28-9-2000. Chuah Seong Phaik ('CCSB's liquidator') was appointed as liquidator of CCSB pursuant to a consent order of the High Court dated 26 July 2001. The relevant part of the consent order states as follows:

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> Encik Chua Seong Phaik dari Tetutan Paul Chuah & Co. dilantik sebagai Pelikuidasi untuk City Centre Sdn Bhd bersama dengan Jawatankuasa Pemeriksaan.

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CCSB's liquidator has not constituted a committee of inspection for lack of funds.

(b) As at the date of the winding up of CCSB, the registered member/shareholder of CCSB is OUB Nominees (M) Sdn Bhd ('UOB nominees'). CCSB is the registered and beneficial

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owner of 16 parcels of freehold land located in the heart of Kuala Lumpur ('the said lands'). CCSB since the date of its winding up is wholly insolvent and has no ready funds. The said lands represent its sole substantial asset. Cheah Theam Kheng ('CTK') claimed to be a creditor of CCSB. CTK also

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asserted that he was a contributory of CCSB. CTK was also a director of CCSB prior to its liquidation.

(c) United Securities Sdn Bhd (in liquidation) ('United Securities') claimed to be a creditor of CCSB. United Securities also

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claimed to be a contributory of CCSB. The main shareholders of United Securities appeared to be CTK and his brother, Cheah Theam Swee ('CTS').

(d) Equiticorp Holdings Ltd (in statutory liquidation) ('Equiticorp

H

Holdings') also claimed to be a creditor of CCSB. Equiticorp Financial Services Ltd (in statutory liquidation) ('Equiticorp Financial') is not a creditor of CCSB and does not claim to be one. Instead it claims to be a creditor of CTS and a creditor of United Securities.

I

(e) CCSB's liquidator took steps to realise the said lands for the purpose of applying the proceeds thereof towards settlement of the creditors of CCSB and the distribution of any surplus thereafter to the contributory of CCSB. CCSB's liquidator conducted a tender for the sale of the said lands. North Plaza Sdn Bhd ('North Plaza') was the highest bidder in the tender. The offer that closed on 30 November 2006 was for a sum of RM163 million. The bid was accepted by CCSB's liquidator by way of a letter dated 1 December 2006. The acceptance letter also informed North Plaza that subsequent to the receipt of the bid, CTK, United Securities, Equiticorp Holdings and Equiticorp Financial had filed an application for an injunction to restrain the sale of the said lands.

(f) As the application for an injunction was a material change of the terms of the tender which adversely affected the interest of North Plaza, by way of a letter dated 20 December 2006 to the CCSB's liquidator, North Plaza gave notice of its intention to revoke the bid unless, amongst others, the purchase price was revised to a reduced sum of RM158 million. Following receipt of the North Plaza's letter, by way of a letter dated 22 December 2006, CCSB's liquidator accepted North Plaza's terms and confirmed that the sale price of the said lands would be revised to RM158 million. North Plaza and CCSB's liquidator then entered into a conditional sale and purchase agreement dated 9 January 2007 ('SPA'). The sale was conditional upon the court's approval.

(g) On 10 January 2007 CCSB's liquidator filed an application in the High Court for an approval to sell the said lands *via* encl. 71 ('encl. 71 application'). North Plaza applied to intervene in the encl. 71 application hearing. On 6 December 2007 the High Court allowed North Plaza's application to intervene.

(h) Subsequently, CTK, Equiticorp Holdings, Equiticorp Financial and United Securities (*via* its liquidator) also applied for leave of the High Court to intervene in the encl. 71 application in order to oppose the sale of the said lands. Their application to intervene in the encl. 71 application was also allowed by the High Court.

(i) At the hearing of the encl. 71 application, CTK opposed the application on the ground that in entering into the SPA, CCSB's liquidator had not acted with the committee of inspection in contravention of the consent dated 26 July 2001 order. This issue was also raised by Equiticorp Holdings, Equiticorp Financial and United Securities in opposing the encl. 71 application. In addition, Equiticorp Holdings, Equiticorp Financial and United Securities took issue with the price at which the said lands were sold to North Plaza.

Findings Of The High Court

[6] On 21 December 2009, the learned High Court Judge allowed the encl. 71 application with no order as to costs. Accordingly, the High Court ordered that approval be given for the sale of the said lands on the terms and conditions as stipulated in the SPA. Further, the High Court by consent, ordered that CTS, CTK, Lim Choon Hong, their servants, agents nominees and/or whosoever otherwise, be restrained from interfering in any way in the sale of the said lands provided that the parties are at liberty to exercise their rights of recourse to the courts. In her judgment, the learned High Court Judge held *inter alia* as follows:

> … the words 'bersama dengan Jawatankuasa Pemeriksaan' merely echo the provisions of subsection 241(1) of the Companies Act 1965. To my mind, the order cannot be interpreted to mean that regardless of the provisions of the Act, in all and every case, the liquidator MUST act WITH the Committee of Inspection. Quite obviously, where a liquidator is empowered by the Act to act on his own, there is no role for the Committee of Inspection. sale, among others, of the immovable property of a wound up company is among the power which a liquidator can undertake on his own without reference to the Committee of Inspection. This is clear from subsection 236(2) of the Act, especially, as was submitted for the liquidator, when the provision is compared to subsection 236(1). The liquidator's exercise of the powers however is subject to the control of the court.

Findings Of The Court Of Appeal

[7] Being dissatisfied with the decision of the High Court, the following appeals were filed at the Court of Appeal:

(i) W-02-286-2010 – appeal by Equiticorp Holdings and Equiticorp Financial;

(ii) W-02(IM)-124-2010 – appeal by CTK; and

(iii) W-02(IM)-287-2010 – appeal by United Securities.

[8] On 25 October 2010 the Court of Appeal allowed all three appeals with costs. In its judgment, the Court of Appeal *inter alia* made the following findings:

(a) The learned High Court Judge erred in holding that the words "bersama dengan Jawatankuasa Pemeriksaan" which appear in the High Court order dated 26 July 2001 merely echo the provisions of sub-s. 241(1) of the Act. The learned High Court Judge failed to appreciate the provisions of s. 237(1) of the Act which regulates the exercise and control of the liquidator's power. It provides that the liquidator shall in the administration of the assets of the company and distribution have regard to the directions given by resolution of the creditors/contributories or by the committee of inspection.

(b) Section 241(1) of the Act is not applicable because the High Court by its order dated 26 July 2001 has already made the determination that the liquidator is to act with a committee of inspection. The liquidator, in our judgment is obliged to do so. Sad to say he did not.

(c) Section 236(2) of the Act empowers the liquidator to sell immoveable property. The learned High Court Judge failed to appreciate that the exercise by the liquidator of the powers conferred on him by s. 236 of the Act is subject to the control of the court as provided for in s. 236(3) of the same Act.

(d) By way of encl. 71 application, the liquidator sought the sanction of the High Court for the sale of the said lands. The said lands were the only assets of CCSB. The learned High Court Judge failed to appreciate that directions of the committee of inspection are mandatory for such sale. It is not an option on the part of the liquidator to act without the committee of inspection. The sale of the said lands to North Plaza is tainted and sanction for the same should not have been granted by the learned High Court Judge.

(e) When the liquidator filed the encl. 71 application and sought approval of the High Court for the sale of the said lands to North Plaza, the learned High Court Judge has to exercise her discretion judiciously. To approve the sale entered into by the liquidator with North Plaza would be to ignore the consent order recorded by another High Court Judge *vide* the High Court order dated 26 July 2001 which consent order imposed the requirement that the liquidator must act with the committee of inspection. It would be unfair to approve the sale and it would be against the consensus and legitimate expectation of the contributories and creditors.

Decision Of This Court

[9] Learned counsel for the appellant submitted before us as its main ground of appeal that the previous liquidator can act independently of the committee of inspection. It was contended that s. 236(2)(c) of the Act permits the liquidator to sell immovable property without the authority of the court or the committee of inspection.

[10] With respect we could not agree with the above contention of the appellant. The terms of the consent order are clear. The liquidator was appointed together with a committee of inspection. It is hence a mandatory requirement that a committee of inspection be established. However, the liquidator failed to establish a committee of inspection or summon a meeting of creditors and contributories for that purpose. Instead, he carried out his functions on his own despite the fact that his appointment was made "bersama dengan Jawatankuasa Pemeriksaan". The liquidator has thus acted in contravention and breach of the consent order.

[11] We would state here that the importance of the appointment of a committee of inspection cannot be overlooked. The intent and purpose of the appointment is to ensure check and balance in respect of the liquidator's acts. If this is not done the consent order that ordered liquidator to be appointed together with the committee of inspection would be rendered redundant. On this point we would cite the case of *Woodsville Sdn Bhd v. Tien Ik*

Enterprise Sdn Bhd & Ors [2000] 1 LNS 335 (unreported) dated 31 May 2000 at pp. 51-53 wherein His Lordship Abdul Aziz Mohamed, J (as he then was) in his judgment had this to say:

> One thing to note is that the Committee of Inspection, as the general body of creditors and contributories, are not advisers to the liquidator. They are people, as representing the creditors and contributories, who have claims on the company. They are the master. The liquidator is to serve their interests. So they are empowered, as they naturally should be, to give directions to the liquidator.
>
> A wish of the Committee of Inspection is a direction to the liquidator. Their wish is his command.

In our judgment the liquidator must act with the committee of inspection in all circumstances, and in particular when exercising the power to sell properties.

[12] It is noted that a liquidator derives the power of sale under s. 236(2)(c) of the Act. However, the exercise of this power is not unrestricted. The exercise of any power under s. 236(2) of the Act is still subject to the control of the court under s. 236(3) of the Act. Section 236(2)(c) of the Act provides as follows:

> (2) The liquidator may:
>
> (a) …
>
> (b) …
>
> (c) sell the immovable property and movable property and things in action of the company by public auction, public tender or private contract with power to transfer the whole thereof to any person or company or to sell the same in parcels;
>
> (d) …

Section 236(3) of the Act further provides as follows:

> (3) The exercise by the liquidator of the powers conferred by this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

[13] It is also to be noted that the exercise of the liquidator's powers under s. 236 is further regulated by s. 237 of the Act which provides as follows:

> Subject to this Part *the liquidator shall in the administration of the assets of the company and in the distribution thereof amongst its creditors have regard to any directions* given by resolution of the creditors and contributories at any general meeting or by the committee of inspection, and any directions so given by the creditors or contributories shall in case of conflict override any directions given by the committee of inspection. (emphasis added)

[14] We are of the view due compliance by the liquidator of the requirements of s. 237 of the Act are of importance in the present case by reason of the consent order that appointed the liquidator with a committee of inspection. In the present case the liquidator not only failed to set up a committee of inspection but acted without one. He has conveniently by-passed the requirements of s. 237 of the Act and instead proceeded directly to apply for sanction of the court to safeguard his action regarding the sale.

[15] It is our judgment that the Court of Appeal was correct in holding that the liquidator's powers are limited by the consent order and the provisions of the Act which require the liquidator to act together with a committee of inspection. The Court of Appeal had arrived at a correct conclusion when they refused to sanction the sale of the said lands by the liquidator.

[16] As regards the sale and purchase transaction of the said lands, it is noted that it was conditional upon sanction being obtained from the winding-up court. This is reflected in cl. 4.02(c) of the sale and purchase agreement as a condition precedent. The appellant had notice that without the sanction of the winding-up court, the transaction cannot be performed or completed.

[17] We are of the view the appellant was fully aware of the surrounding circumstances of the case when it entered into the conditional sale and purchase transaction. In this respect, the appellant had knowledge of the terms of the consent order that appointed the liquidator with a committee of inspection. The appellant also had notice of the pending legal proceedings filed by Cheah Theam Kheng at the material time to restrain the liquidator from disposing of the said lands and the removal of the liquidator. It is thus not surprising that the sanction from the winding-up

court became a necessary condition precedent. The appellant therefore knew what it was bargaining for and it cannot now say that it is a bona purchaser for value who was not privy to the terms of the consent order.

Conclusion

[18] For the reasons above stated we would answer the question posed in this appeal in the negative. In the result we would dismiss all three appeals with costs. We award RM100,000 costs to the first respondent, RM80,000 to the second respondent and RM80,000 to the third respondent. Deposit to be refunded.